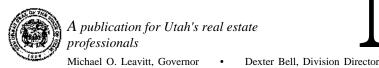
Utah Real Estate



NEWS

SEPTEMBER 2002

Volume 32 -- Number 2

New Distance Education Rules for Continuing Education

New rules have been adopted by The Utah Real Estate Commission dealing with real estate continuing education. Traditional classroom training for continuing education and pre-license education will not be affected. The new rules define distance education as any course which does not take place in a traditional classroom setting and where the teacher and student are separated by distance and/or time. These rules affect courses taught via the Internet, CD-ROM, videotape, audiotape, satellite broadcast and other modes of distance education delivery. Any approved real estate school may have continuing education distance education courses approved by providing documentation that:

- 1. The course's delivery method has been certified by The Association of Real Estate License Law Officials (ARELLO), and
- 2. The course subject matter has been approved by the Utah Division of Real Estate.

All distance education (including video tape) courses fall under the provisions of these new rules.

These rules have been established in order to encourage additional continuing education course offerings and different delivery methods for courses to licensees throughout the state. The ARELLO certification establishes minimum quality standards to ensure that licensees receive meaningful continuing education.

It is now possible for a licensee to receive CE credit for a course they participate in on their own computer, where ever they live, at any hour of the day or night.

The specific language for these changes to permit continuing education to be distance education are presented below (text crossed out has been deleted, text underlined has been added):

R162-9-5. Submission of Course for Certification.

9.5.3 [Application for a video course will include all information as defined in R162-9-5-2 except for R162-9-5-2-6 and R162-9-5-2-8. The application will also include a copy of the video.

9.5.3.1 If it is the intention of the course provider that the video course is to be viewed other than in a certified school, the application will also include the following:

- (a) The method for determining that each home assignment has been completed by the registered student; and
- (b) The method for correcting home assignments and workbooks, and the procedure for notifying the student if the assignment has not been done correctly; and

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New D.E. Rules

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(c) A copy of the home assignment and the workbook material.] Continuing education courses in which the instruction does not take place in a traditional classroom setting, but rather through other media where teacher and student are separated by distance and sometimes by time, may be certified by the Division provided the delivery method of the course has been certified by the Association of Real Estate Licensing Law Officials (ARELLO).

9.5.3.1 Only the delivery method will be certified by ARELLO. The subject matter of the course will be certified by the Division.

9.5.3.2. Education providers making application for Distance Education Certification shall provide appropriate documentation that the ARELLO certification is in effect and that the course meets the content requirements of R162-9.3.2 along with other applicable requirements of this rule.

9.5.3.2.1. Approval under this paragraph will cease immediately should ARELLO certification be discontinued for any reason.

9.5.3.3. Courses approved for distance education delivery shall justify the classroom hour equivalency as is required by ARELLO standards.

9.5.4. The Real Estate Commission reserves the right to consider alternative certification methods and/or procedures for non-ARELLO certified Distance Education Courses.

What Real Estate Professionals Should Know About Title X

by Suzanne Stemmons, Health Educator Utah Department of Health Childhood Lead Poisoning Prevention Program



As a real estate professional, being informed about Title X will help to ensure that your clients are educated about lead-based paint and the effects lead can have on their health, and especially their children's health. Title X: Residential Lead-Based Paint Hazard Reduction Act of 1992 is the disclosure rule that states a Lessee or Purchaser is under no obligation to purchase or lease target housing until several requirements are met by the agent involved².

The U.S. Department of Housing and Urban Development (HUD) rules state that real estate professionals must disclose the age of a house if it was built before 1978 and whether it contains lead-based paint if it is known. The primary focus of Title X is to prevent children from becoming lead poisoned; the solution is to find and fix lead-based paint hazards first, thus avoiding possible harm to a child¹.

The following are some of the requirements that must be met by real estate professionals as stated in the Title X Residential Lead-Based Paint Hazard Reduction Act of 1992; Interim Enforcement Response Policy²:

- Sellers or Lessors must disclose the presence of any known leadbased paint and/or lead based paint hazards to the Purchasers or Lessees and to any agent;
- Sellers or Lessors must provide Purchasers or Lessees with any available records or reports pertaining to the presence of leadbased paint and/or lead-based paint hazards in the target housing;
- Sellers or Lessors must provide Purchasers or Lessees with an EPA-approved lead hazard information pamphlet;
- Sellers must grant Purchasers a 10-day period to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards;
- Sellers or Lessors must complete a disclosure form certifying compliance with the disclosure requirements;
- Sellers and Lessors must retain a copy of the disclosure form for at lease three years from completion of the transaction; and
- Each agent involved in any transaction to lease or sell target housing must ensure compliance with all requirements of the Disclosure Rule.

Lead poisoning is a very serious illness that can cause many health problems that include damage to the brain, nervous system, and kidneys.



EPA, HUD Clarify Lead Disclosure Rules



Washington: In response to questions that the NAR has posed, HUD and the EPA have issued some clarifications on when lead-based paint disclosure must be made.

Regulators approved for national use California contract language that allows disclosures to be made after a seller has accepted a buyer's offer, so long as the buyer has the right to cancel the purchase upon receipt of the disclosure and is allowed 10 days for an inspection.

Also, a seller/lessor may distribute photocopies of a completed disclosure form to prospective purchasers/lessees to execute and return to the seller/lessor with the offer. The regulators confirmed that completion of the disclosure and acknowledgement form in two separate documents satisfies the disclosure obligations.

Only the owner is required to complete the disclosure form when the property is held

jointly, as long as the non-executing owner does not have any additional undisclosed information or records of lead-based paint hazards.

Sellers, lessors and their representatives may continue to distribute the 1995 version of the EPA's "Protect Your Family From Lead in Your Home" pamphlet, even though it was revised in 1999. (The 1999 revision deleted certain phone numbers.)

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Lead poisoning can cause decreased intelligence, behavioral problems and learning disabilities such as Attention Deficit Disorder. Other health problems with lead poisoning are speech and language problems, anemia (low iron), poor muscle coordination, decreased muscle and bone growth, and hearing damage. Children sometimes show signs and symptoms, but there may not be any indication that the child has lead poisoning. Some of the signs and symptoms are fatigue, irritability, insomnia, loss of appetite and weight, and hyperactivity.

The largest contributor to lead poisoning is lead-based paint. If a house does contain lead-based paint and it is chipping or peeling, this can be hazardous. Even paint that looks like it is intact should be a concern if children are continually around it. Leaded dust is also a concern and can be formed by dry sanding and scraping of lead-based paint or when painted surfaces rub together. This dust can then settle onto children's toys, bottles, and hands. Children can also become lead poisoned by breathing the dust in. Lead-based paint is primarily found in homes built before 1950, but it can be found in homes that were built up to 1978 when federal law prohibited the use of lead-based paint in homes due to the risk of lead poisoning.

Additional information on Title X is available on HUD's website: www.hud.gov/offices/lead/indes.cfm or by calling HUD's toll free number: 1-800-HUDS-FHA. You can also contact the Utah Department of Health, Childhood Lead Poisoning Prevention Program and ask for Mark Jones or Suzanne Stemmons at (801) 538-6191.

- [1] Alliance To End Childhood Lead Poisoning. Understanding Title X: A Practical Guide To The Residential Lead-Based Paint Hazard Act of 1992 (1993).
- [2] United States Environmental Protection Agency. Title X: Residential Lead-Based Paint Hazard Reduction Act of 1992, Interim Enforcement Response Policy (1998).



Utah Real Estate News

Purpose: To provide licensees with the information and education they need to be successful in competently serving the real estate consumer

Real Estate Commission: Chairman--Thomas M. Morgan Vice Chairman--Danny M. Holt Commissioners--Gage H. Froerer, Dorothy M. Burnham, Maralee Jensen

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License Renewal Headaches Can Be Minimized

Ten Suggestions to Ensure Smooth Sailing

The Division often receives incomplete license renewal applications, which result in frustration and delays. Many of these concerns could be minimized by considering the following suggestions:

PLAN AHEAD - License renewals are mailed out approximately six weeks before the expiration of your license. If you have planned accordingly, you will reach for your file containing 12 hours of original continuing education certificates (nine hours of electives and the current three hour Core Course) you have acquired over the previous two years. Next, complete your application, include your check, and mail your renewal. If you have properly planned, it shouldn't take more than a few minutes to complete your license renewal and send it in.

Ideally, you will have selected continuing education courses that have strengthened your knowledge and skills, thus directly improving your abilities as a real estate professional. No last-day-of-the-month mad rush to a real estate school to receive anything off the shelf to satisfy the requirement!

2. COMPLETE AND ACCURATE INFORMATION - Much time and confusion occurs over incomplete and/or inaccurate renewal submissions. Before calling the Division, *please* thoroughly read the instructions included with your renewal. Completely fill out all necessary information. Make sure that we have your accurate home address (all future division mailings will be going to this address). Sign your renewal, include your check for the proper amount.

Things NOT to do: Treat your renewal form as a change card. If you change anything other than your home address, this change MUST be accompanied by a signed change card (change of office, "activating" or "inactivating" a license), name change (requires copy of drivers license or marriage certificate, divorce decree, etc.). Remember, your real estate renewal form DOES NOT substitute for a change card.

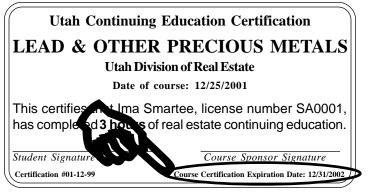
It is to your advantage to provide the Division as much information as possible. If you have provided accurate per-

sonal and business phone numbers, cell phone numbers, email addresses, etc., we are better able to contact you to resolve concerns. Inactive agents have an even greater reason to make absolutely certain that we have correct information. Without a brokerage to contact, if you have not maintained timely and accurate information with the Division, we have no way to contact you.

Your business information is available to the public. Your personal information is confidential unless it is the same as your business information.

Unfortunately, some agents have lost their license because they failed to submit an address change, and then didn't remember to renew their license when it was due. THE RESPONSIBILITY TO RENEW YOUR LICENSE IS YOURS. Keeping the Division informed helps you fulfill this duty.

3. CONTINUING EDUCATION CERTIFICATES - We require original certificates. Twelve hours of certificates are required (including the mandatory current three hour Core course). Certificates will ONLY be accepted for renewal if they were awarded within the two year period immediately preceding the expiration of your license. For example: Your license expires on June 30, 2002. Continuing Education certificates will only be accepted if they were attended between June 30, 2000 and June 30, 2002. Some licensees have been confused by seeing a course expiration date on the bottom of their continuing education certificates.



This date indicates the date a C.E. course certification ex-

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pires. If you took the course during the time the C.E. course was approved, we WILL accept this certificate for continuing education credit (as long as the course was taken during the two year time period immediately preceding the expiration of your license).

Only submit continuing education certificates at the time of your license renewal. Certificates sent to the Division preceding your license renewal will not be retained. Please keep your own file for certificates and ONLY submit them at the time of your renewal, UNLESS you are requesting credit for a NON CERTIFIED continuing education course.

• DEADLINES - We will accept U.S. Postmarks in determining whether an application or renewal is submitted on time. Postal Meter marks will NOT be honored. Example: If your license expires on June 30, 2002, we will accept any postmark on or before June 30, 2002 in determining if you renewed on time. Since June 30, 2002 is a Sunday, the deadline for applications or renewals would be extended until Monday July 1st (the following business day). Some Post Offices change the imprint date of the date stamp to the following business day, if you go to the Post Office in the late afternoon. If you drop your renewal in a Post Office Mail Box, your mail will generally be post marked days later. Make sure that you provide sufficient time to meet the deadlines. Late renewals will be delayed and possibly returned.

5. EXPIRED LICENSES - Your license expires the day after your expiration date, no "grace periods." Your affiliation with your principal brokerage

automatically and immediately terminates. Your license can be renewed for up to thirty days (sales agents), by completing a change card (activating you with your broker), paying the \$15.00 activation fee, \$10.00 late fee, \$51.00 renewal fee, including continuing education certificates, and other renewal forms. It is to your advantage to renew on time to avoid delays, additional expenses, and paperwork. Principal brokers with expired licenses have other expenses and paperwork (principal brokers refer to renewal papers for specific details and procedures).

6. INACTIVE LICENSES - Some agents who work with a "referral company" (Division Rules make no distinction between a "referral company" and any other principal brokerage), incorrectly assume or believe that their license is on "inactive" status. Inactive licensees are NOT associated with ANY real estate brokerage. Agents working at referral brokerages must complete continuing education requirements as do all active licensees. Your license only goes inactive after YOU have submitted a signed change card to the Division. You would be surprised at how many agents do not know whether their license is active or inactive. Once again, this important responsibility is yours alone.

• "LOST" RENEWAL MATERI-ALS - We will mail renewal information to the home address (or specified mailing address) you have provided the Division, approximately six weeks before the expiration of your license. Some licensees set aside their renewal materials, intending to return to them as their expiration date looms nearer. Papers get misplaced and busy schedules make it very easy to forget the importance of renewing your license.

If you have moved and not provided the Division your new address (which you are required to do within 10 days of moving), obviously your mail will be delayed while it is routed to your *old* address. If you failed to provide a forwarding address, or if more than six months have passed since you submitted your forwarding address to the Post Office, your renewal will be returned to the Division.

Remember, YOU are responsible to keep the Division informed of your current address and phone number(s)! Many licensees are angry and frustrated with the Division when their license has expired, and they were not notified. The Division is only required to mail renewal information to the address you have provided. So remember to keep the Division informed of your current address by mailing or faxing written notification to the Division.

MULTIPLE PROFESSIONAL LICENSES - If you are both a licensed real estate agent AND a licensed appraiser, you have two renewal processes to complete (oh the joy)! Both real estate and appraisal license regulations require continuing education. The question often arises "Can I use my real estate continuing education to count as continuing education for my appraisal license?" Although related, both professions demand unique skill requirements. Generally, education for each profession is unique, and thus, not transferrable to both professional licenses.

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License Renewal Headaches Minimized

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If however the course subject materials do in fact overlap to both real estate and appraisal, and, if the education genuinely increases your professional competency and thereby meets the objective of protection of and service to the public *for both professions*; then this education *could* serve as acceptable continuing education for both licenses. In this instance for the first professional license you renew, you would submit the original certificate. The renewal of the second professional license you would submit a copy of the previously submitted C.E. certificate and write on the copy "Original certificate submitted with (appraisal/real estate) license renewal."

• PERSONAL RESPONSIBILITY - You alone are responsible for your real estate license. Don't make assumptions regarding the status of your license. A few sad but actual remarks:

"Someone in my office was *supposed to* turn in my change card."

"Five years ago, *someone* called the Division and they said that I *didn't need to do anything* with my real estate license before leaving the country."

"Why didn't you (the Division) track me down to let me know my license expired?"

"When we went on our mission, we left our son in charge of renewing the license, but he didn't know what he had to do."

Make sure that the Division has timely and accurate information regarding your license. You can always check our website or call the Division to verify the information we have on record. Your failure to understand the renewal requirements will NOT give you an excuse for allowing your license to expire. Be informed. Take personal responsibility.

10. DON'T BE THE EXCEPTION - 98% of you are already doing simply MAH-VE-LOUS when it comes to license renewal. With approximately 15,000 licensees it doesn't take many who fail to follow instructions to slow down our processing time. We are better able to assist you with your questions and concerns when we reduce the time spent dealing with incomplete applications.





Real Estate Disciplinary Sanctions

ALLRED, DOUGLAS P., Associate broker, Coldwell Banker Tugaw Realtors, Tremonton Branch. Agreed to pay a \$1,000 fine and have his license placed on probationary status for one year beginning July 17, 2002 based on multiple violations of the statute and rules. Mr. Allred filled out a REPC in March, 1997 that had an ambiguous settlement deadline that resulted in a dispute and a civil suit between the parties. He acted as a limited agent in the transaction and, although he had consent from the sellers to act as a limited agent, he did not sign a buyer agency agreement with the buyer or obtain informed consent to limited agency from the buyer. #RE97-07-14

BEECH, JAMES J., Principal Broker, Direct Realty Advisors, Sandy. Renewal denied effective April 18, 2002 because of actions found to be dishonest and lacking integrity and truthfulness involving the furnishing of down payments to buyers in transactions, the obtaining of false gift letters, and testifying in a misleading manner at his hearing before the Real Estate Commission, among other things. #RE20-09-14 Mr. Beech requested Agency Review of the denial of his renewal. His request for Agency Review was still pending at the time of publication.

BEUTLER, ALMA, Sales Agent, Syracuse. Initial license granted on probationary status because of 1981 theft conviction. Until his first renewal, he will be required to notify any principal broker with whom he licenses about his past conviction.

BUNCH-ALLBRIGHT, MAGDALENA, Principal Broker, Salt Lake City. Agreed to pay a \$250.00 fine and attend the Division's trust account seminar for violating the rule requiring that all client funds be deposited into the brokerage real estate trust account. Ms. Bunch-Allbright deposited client funds to pay for repairs to a home into her operating account and made disbursements from that account. Except for the fact that the funds were held in the wrong account, the Division's investigation did not yield any evidence that the funds were diverted or otherwise mishandled. #RE01-04-15

BURWELL, WILLIAM, Sales Agent, Ogden. Expired license reinstated and then immediately suspended on May 20, 2002 because of a Sale of Illegally Taken Wildlife conviction. Mr. Burwell's license will remain suspended until such time as his fine in the criminal matter

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is fully paid and his criminal probation has been terminated.

CARMAN, BEATRICE J., Certified Real Estate Instructor, New Harmony. Agreed to pay a \$500.00 fine, have her instructor certification placed on probation for one year beginning April 17, 2002, and to refund monies paid by four individuals for continuing education courses. Ms. Carman provided continuing education certificates to four individuals without having received the prior approval and certification from the Division for the courses taught. Although her school was certified to teach pre-licensing courses, it was not certified to teach continuing education courses.

CHAPMAN, DAWN MARIE, Associate Broker, Prudential Utah Real Estate, Park City. License renewed on probationary status because of a felony conviction in Third District Court in Salt Lake County, Case 001919532, resulting from driving while intoxicated.

CHRISTENSEN, CARL B., Sales Agent, West Jordan. Initial license granted on probationary status on May 20, 2002 because of past criminal history. Until his first renewal, he will be required to notify any principal broker with whom he licenses about his past criminal history.

CHRISTOPHER, GEORGE E., Ogden. Application for sales agent license approved on probationary status because of past criminal convictions. During the probationary period, which will last until his first renewal, Mr. Christopher must disclose his past criminal history to any principal broker with whom he licenses.

CUTLER, ALAN G., Principal Broker, Home Town Properties, Provo. License suspended for six months beginning May 17, 2002 and placed on probationary status for the balance of the renewal cycle based on a recent action taken against him by the New York Stock Exchange. Mr. Cutler requested Agency Review and obtained an Interim Stay of the Order of the Commission and the Director. His Request for Agency Review was still pending at the time of publication.

DEVORAK, CHARLES R., Salt Lake City. Application for sales agent license approved on probationary status because of past criminal convictions. During the probationary period, which will last until his first renewal, Mr. Devorak must disclose his past criminal history to any principal broker with whom he licenses.

ELLERTSON, ROBERT K., Salt Lake City. Application for sales agent license approved on probationary status because of past criminal conviction. During the probationary period, which will last until his first renewal, Mr. Ellertson must disclose his past criminal history to any principal broker with whom he licenses.

FALVO, PETE, Sales Agent, Wasatch Front Realty Group, Salt Lake City. License renewed on probationary status on the following conditions, among others: 1) He shall pay a \$500.00 fine; 2) He is to make sure that all of his commissions are paid to his principal broker; 3) He shall meet no less than every two weeks with his principal broker or the broker's office manager to inform them about all of his transactions; 4) On an annual basis, he shall deliver to the Division and his principal broker the portions of his tax forms that reflect his earnings as a real estate agent; and 5) If commissions have been paid to him outside the brokerage, the Division shall not be precluded form using his tax forms as evidence in a licensing action against him.

HADLEY, E. BARRY, Sales Agent, North Ogden. License renewed but then suspended beginning June 19, 2002 because of a conviction of Failure to Make/Render/Sign/Verify a Tax Return. Mr. Hadley's license will remain suspended until: all outstanding State and Federal tax returns have been filed; all tax liabilities have been paid in full, including all fines, interest, and penalties; all court ordered community service has been completed; all court ordered fines have been paid in full; and proof of financial counseling acceptable to the Division has been submitted to the Division. Mr. Hadley has requested Agency Review. His request for Agency Review was still pending at the time of publication.

JONES, DOUGAN T., Salt Lake City, Expired licensee, formerly branch broker, Wardley Better Homes & Gardens. Approved for a new license on condition that he pay a \$500.00 fine in settlement of a complaint filed before his previous license expired. The fine was imposed for failure to exercise reasonable supervision over a sales agent. The complaint alleged that the sales agent took a lawn mower and a snow blower from a home listed with the brokerage. Mr. Jones maintains in mitigation that he directed the sales agent to return the property and later inquired of the agent, who had assured him the property had been returned, but he did not confirm with the homeowner that the property had in fact been returned. #RE98-03-16

LAND, TODD D., Sales Agent, Ogden. Initial license granted on probationary status on May 20, 2002 because of past criminal history. Until his first renewal, he will be required to notify any principal broker with whom he licenses about his past criminal history.

LUCKY, JOHN W., Sales Agent, Midvale. Application for sales agent license approved on June 19, 2002 on probationary status until his first renewal because of past misdemeanor convictions. During the probationary period, Mr. Lucky will be re-

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R.E. Disciplinary Sanctions

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quired to notify all principal brokers with whom he licenses about his past convictions.

MCCLEARY, JAMES S., Heber City. Application for renewal denied because of a recent felony conviction for Illegal Discharge of a Weapon, pattern of criminal conduct, and failure to notify the Division of convictions.

MILLWARD, RICHARD D., Principal Broker, Intermountain Properties, Salt Lake City. Broker license suspended for 24 months beginning May 31, 2002, based on failing to reasonably supervise Carolyn Manning when Mr. Millward was the principal broker for Manning & Associates, Inc. in Salt Lake City, and on failing to exercise reasonable supervision over Douglas S. Reynolds when Mr. Millward was the principal for Harbor Place Management Realty, Inc. in Salt Lake City. Mr. Millward maintains in mitigation that his violations were negligent and not intentional. Mr. Millward will be issued a sales agent license on probationary status in place of his broker license. #RE96-12-07, RE20-03-16

MURPHY, JAY L., Associate Broker, SLI Commercial Real Estate Company, Salt Lake City. Renewal approved on probationary status effective April 17, 2002 because of a bar from association with any member of the National Association of Securities Dealers.

PRICE, PAUL A., Inactive Sales Agent, Draper. License surrendered effective July 17, 2002 in lieu of continuing to respond to the Division's investigation of Case RE02-04-16 and numerous other real estate transactions. Mr. Price may not apply for a new Utah real estate license for a minimum of five years. #RE02-04-16

SIMON, MYRON F., Sales Agent, North Salt Lake. Initial license granted on probationary status on May 20, 2002 because of past criminal history. Until his first renewal, he will be required to notify any principal broker with whom he licenses about his past criminal history.

TERRILL, DANA M., Sales Agent, Murray. License renewed on May 20, 2002 on probationary status until her next renewal because of having signed her daughter's name on the surrender form of an insurance policy in order to receive the proceeds herself. In mitigation, Ms. Terrill had paid for the policy in question and the situation arose from a bitter family dispute.

Utah Division of Real Estate Caravan 2002

Free CE coming to a town near you!!

Meet four of the Division of Real Estate's leaders! The Division Director, Education & Licensing Director, Lead Investigator, and Trust Account Auditor are planning four stops throughout the state to meet and talk with you and to answer your questions. A total of 5 hours of continuing education credit can be earned - AT NO COST TO YOU! Pre-registration is required in order to receive CE.

Please send your registration to the Division early to reserve your seat. Include your name, license number, address, phone number, e-mail address, and the date/city you would like to attend. You may attend both sessions or just one (see schedule below) - please indicate your preference with your registration. You will receive a confirmation of your registration from the Division.

Friday, November 1, 2002 - Logan (Comfort Inn)*

9:00 a.m. - 12 Noon Trust Account Seminar 1:00 p.m. - 3:00 p.m. Division Instruction/Q&A

Tuesday, November 5, 2002 - Richfield (Budget Host/Knights Inn)*

9:00 a.m. - 12 Noon Trust Account Seminar 1:00 p.m. - 3:00 p.m. Division Instruction/Q&A

Wednesday, November 6, 2002 - Cedar City (Willow Glen Inn)*

10:00 a.m. - 12 Noon Division Instruction/Q&A 1:00 p.m. - 4:00 p.m. Trust Account Seminar

Thursday, November 7, 2002 - Price (College of Eastern Utah, Alumni Room)*

10:00 a.m. - 12 Noon Division Instruction/Q&A 1:00 p.m. - 4:00 p.m. Trust Account Seminar

*Please note: The specific locations (within each city) are still tentative. Please **do not** contact the hotels directly for conference information.

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Assistants Assistance

by Dave Jones, Investigator Division of Real Estate



The Division often receives questions about licensees who work as a personal assistant to

another licensee. This is an area that is evidently misunderstood, but shouldn't be, as the law is very specific on this issue.

Utah real estate licensing law does not provide for an "assistant" relationship between real estate sales agents. A person either needs a license for the acts they are doing, or they don't. The rule about unlicensed assistants (Rule 6.2.15), including compensation, addresses acts which do not require a license. If the acts do require a sales agent license, then the agent must be licensed under a principal broker.

The law makes it clear that payment to a sales agent for licensed activities cannot come from anyone other than the agent's principal broker. Utah Code 61-2-10 states "...it is unlawful for any associate broker or sales agent to accept valuable consideration for the performance of any of the acts specified in this chapter from any person except the principal broker with whom he is affiliated and licensed..."

If two agents under the same principal broker choose to work on a cooperative basis, they can do so under the direction of the broker. If a more experienced agent needs help to be more productive, and a less experienced agent wants to learn and participate in transactions by "assisting" the experienced agent, combining their efforts could result in greater volume than they might achieve separately. If the two agents negotiate with the principal broker to provide a greater split to the experienced agent, and a lesser portion to the less experienced agent, this is allowed. The principal broker could make the compensation to the less experienced agent an hourly or monthly wage. This is also allowed.

What is not allowed is for the two agents to have a "master/servant" relationship. Utah Code 61-2-11 states that a licensee may be suspended, revoked, fined, or denied for "(5)...representing as sales agent or having a contractual relationship similar to that of sales agent with other than a licensed principal broker..."

If one agent pays another agent for their "assistance" in a transaction, then the "assistant" is, in effect, either an employee or an independent contractor of the experienced agent, not the principal broker. This relationship is prohibited.

Jon Brown Receives Special Award

The Salt Lake Board of Realtors year 2001's awards go to the few who have achieved extraordinary career performance and exemplary community service, having demonstrated proven perseverance and indispensable dedication to their

industry while offering quality service to their clients.

The Division of Real Estate's own Jon Brown, Lead Investigator, received this year's Special Recognition Award. He supervises a team of seven investigators who look into complaints against real estate agents, brokers, appraisers, and mortgage lenders. He is noted for being extremely fair and thorough. "The Board appreciates his integrity and reasonableness."

Jon was born in Springfield, Missouri. He was a 1959 graduate of West High School in Salt Lake City and then attended the University of Utah. He began his career as a manager for Dumont Corp., which owned savings & loans, finance, and mortgage companies. Following this, he worked as the President of Western Land Contracts Mortgage Company, and then was Vice President for Valley Bank and Trust. He came to the Division as an investigator in 1989, and became Lead Investigator in 1997. He has held many licenses and designations, including: licensed insurance agent, real estate broker, appraiser, certified instructor for real estate and appraisal.

Jon is married to Julie Christensen Brown. They have 3 daughters and 6 grandchildren. His hobbies include restoring old cars and playing softball.

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Improper Practices Rules Amended

Recently the Real Estate Commission adopted some significant changes to the Administrative Rules dealing with improper practices. These rules address the inherent conflict of interest when a licensee acts as an agent (buyer's, seller's, or limited), in a transaction where they (the licensee), are simultaneously acting as a principal.

The new rules declare that a licensee *may not* represent a buyer or act as a limited agent if the licensee has an ownership interest in the subject property. These rules further announce that a licensee may not represent a buyer, or act as a limited agent in a transaction *if* the licensee is an officer, director partner, member, employee, or stockholder of an entity that is the seller in the transaction.

In instances where a licensee desires to purchase a property that their company currently has listed, specific action is required by the licensee and their broker. In order to avoid a possible breach of fiduciary duty or conflict of interest with the seller, the listing agreement must be terminated *prior to, or at the same time* the licensee contracts to purchase the property.

6.1.3.1. A licensee may not represent or attempt to represent a buyer in a transaction as a buyer's agent or as a limited agent if the licensee has an ownership interest, no matter how small, in a property which the buyer offers to purchase. A Licensee may not represent or attempt to represent a buyer in a transaction as a buyer's agent or as a limited agent if the

licensee is an officer, director, partner, member, employee, or stockholder of an entity that is the seller in the transaction.

6.1.3.2. A licensee may not represent or attempt to represent the seller in a transaction as a seller's agent or as a limited agent if: a) the licensee is the buyer in the transaction; b) the licensee has any ownership interest in an entity that is the buyer in the transactin; or c) the licensee is an officer, director, partner, member, employee, or stockholder of an entity that is the buyer in the transaction.

6.1.3.3. To avoid a potential breach of fiduciary duty or a conflict of interest, any existing listing agreement with the licensee's brokerage must be terminated prior to or at the time the licensee, or any entity in which the licensee is an officer, director, partner, member, employee, or stockholder, contracts to purchase the property that is the subject of the listing agreement.

A clarification of the administrative rule dealing with referral fees from lenders was also changed. A licensee may not receive a referral fee from either a lender *or* a mortgage broker.

6.1.10. Referral fees from lenders. A licensee may not receive a referral fee from a lender or a mortgage broker.

The rule on offering gifts and inducements by a principal broker has been modified. It is now possible to offer a gift of appreciation *to a party to the*

transaction (buyer, seller, lessor, or lessee) without the written consent of the party who is obligated to pay the commission. However, the party who will be paying the commission *must be notified* that the inducement will be offered. This rule does not authorize a principal broker to give any inducement that would violate the underwriting guidelines that apply to the loan for which a borrower has applied.

This rule *does not* change the rule dealing with Finder's fees (Administrative Rule 6.1.9 and 6.1.9.1) It is still prohibited for a licensee to pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring business. A licensee may give a gift valued at \$50 or less to an individual in appreciation for an *unsolicited* referral.

6.2.12. Gifts and Inducements. A gift given by a principal broker to a buyer or seller, lessor or lessee, in a real estate transaction as an inducement to use the services of a real estate brokerage, or in appreciation for having used the services of a brokerage, is permissible and is not an illegal sharing of commission. If an inducement is to be offered to a buyer or seller, lessor or lessee, who will not be obligated to pay a real estate commission in a transaction, the principal broker must notify the party who will pay the commission that the inducement will be offered. This rule does not authorize a principal broker to give any type of inducement that would violate the underwriting guidelines that apply to the loan for which a borrower has applied.

September 2002

Important Changes Involving the Disbursement of Trust Account Monies

The Real Estate Commission just adopted rules that modify the disbursement of trust account monies. If a transaction fails, the principal broker is required to determine if terms expressed in the REPC authorize the disbursement of trust account funds; *or*, if the party who will not receive the money has signed authorizing disbursal. In either case, the broker has the written authorization to disburse that is required and may immediately release the earnest monies in his/her trust account whether or not there is a dispute between the parties over the funds.

A dispute over funds is defined as any situation in which both parties to a contract have submitted a written claim of entitlement to the earnest money trust funds held by a broker.

If the principal broker does not have written authorization to disburse, either in the REPC or a separate writing, and if both parties have submitted a written claim of entitlement to the funds, then mediation is required if no party has filed a civil suit arising out of the transaction.

If the parties have agreed in paragraph 15 of the REPC that disputes shall be submitted to professional mediation, the broker is required to notify the parties of their obligation to submit the dispute over funds to an independent mediator agreed upon by the parties. This ends the broker's obligation in the dispute over funds until such time as the broker receives either a court order to disburse or written

authorization from the parties who will not be receiving the funds to disburse to another party.

If the parties have agreed in paragraph 15 of the REPC that disputes may be submitted to professional mediation, the principal broker is required to provide the parties with written notice of the dispute and request that they meet with the broker to mediate the matter, but only if the broker has not already interpleaded the funds prior to the time a written claim of entitlement to the funds has been received from both parties. If the broker is required to mediate, the principal broker's request to the parties to engage in broker mediation must be sent within 15 days of receiving written notice that both parties claim the funds. In the event that the broker's attempt to mediate is unsuccessful, this ends the broker's obligation until such time as the broker receives a court order to disburse or written authorization from the parties who will not be receiving the funds to disburse to another party.

If the circumstances of the transaction make it unclear to the broker whether there is written authorization in the REPC (or elsewhere) to disburse the funds; the broker at his/her option may elect to interplead the funds directly to court in any failed transaction.

If the principal broker elects to interplead the matter to court, the funds shall *only* be disbursed:

- If the party not receiving funds provides written authorization; or
- 2) Pursuant to the order of a court of competent jurisdiction.

If the principal broker has not received written notice of a claim to the funds within five years after the failure of the transaction, the principal broker may remit the funds to the State Treasurer's Office as "abandoned" property according to the provisions of Utah Code Section 67-4a-101, et seq.

The limit of a principal broker's own funds which can remain in his/her "Real Estate Trust Account," or "Property Management Trust Account" has been *increased*. The new limit for a principal broker's personal money in his/her trust account has gone from "not more than \$100" to "not more than \$500."

Please refer to the specific language text in Rule 162-4.2 regarding these significant changes. The rules are available online at (http://www.rules.state.ut.us/publicat/code/r162/r162-004.htm#T2), or they may be purchased from the Division for a small printing fee.



In Memoriam

The Division of Real Estate expresses condolences to the families of the following real estate licensees who have recently passed away:

Clay D. Agee St. George Rahul Banerji Ogden Peter D. Bealba Eden Mark G. Boyle **Taylorsville** Richard W. Crabtree St. George Don Duncan Bountiful Diana S. Jacobson Randolph Roger A. Lee Farmington Robert S. Miller Park City Richard E. Minton Ogden James L. Underwood Clearfield Ronald E. Welsh Sandy Robert G. Wilkinson, Jr. Midvale



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Raising the Listing Price

by David Jones, Investigator Division of Real Estate

The Division is aware that agents and brokers are sometimes asked to raise a listing price in the MLS to an amount equal to, or higher, than a pending or accepted offer. The primary reason this is done is to facilitate an inflated appraisal on the property to commit deception. The Division considers this to be "making a substantial misrepresentation," which is grounds for a license to be revoked, suspended, or fined.

Who would be deceived? At a minimum the appraiser, and the underwriter of a purchaser's loan. The intent of this action is to enable a buyer to illegally get into a property with no money down, to obtain more favorable loan terms than he is entitled to obtain, or to skim money out of the property.

Raising the listing price has, in the past, resulted in appraisers reaching a value higher than the asking price at the time of an offer because the appraiser was only required to report current or recent listing history. If the appraiser only used the "current" listing, which had been artificially raised, the underwriter would not know the true details. However, recent changes in the standards for appraisers now mandate that the appraiser research and report in the appraisal, at a minimum, a 12 month listing history, so the change would have to be reported in the appraisal.

In summary, if the listing brokerage raises the listing price in the MLS, for the purpose of making the listing price appear to justify an inflated sales price, the Division will consider this to be a deceptive act, and will take disciplinary action against any person who participates. This will include real estate agents and brokers, appraisers, and any mortgage broker who advocated the change.